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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/781,577 | 02/18/2004 | Stephen C. Bytnar | 040051 | 3047 |

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BUCHANAN INGERSOLL PC
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301 GRANT STREET, 20TH FLOOR
PITTSBURGH, PA 15219

EXAMINER

BRUNSMAN, DAVID M

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 1755 | |

DATE MAILED: 03/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/781,577

Applicant(s)

BYTNAR ET AL.

Examiner

David M Brunsman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17, 20-25, 27 and 28 is/are rejected.
- 7) ☒ Claim(s) 18, 19 and 26 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 20040218.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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Claims 18, 20 and 22 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a *previous* claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. These claims depend from later claim 23. The numbering of claims will be corrected at allowance, if appropriate.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The maximum amount, on a dry basis, of sugar solid (50%) would yield over 100% total weight even with the minimum amount of salt. It is not possible to accurately determine the actual proportions that would be covered by claim 13.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-17 and 20-25 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 6468442, published as WO 01/07532 on 01 February 2001.

Column 6, line 69 through column 7, line 13, teach commercially available Caliber™ products comprising 80-90% brine of a salt such as $MgCl_2$ and a remainder of 36 PE corn syrup containing 60% dissolved sugar solids comprising 14% dextrose, 11.5% maltose, 10.5% maltotriose and 69% higher saccharides (dextrose polymers) that are applied to outdoor surfaces including roads. The intended use recitations of claims 1, 6, 13, 14 and 23

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only exclude materials that would prevent the application in the recited future use and fail to patentably distinguish the instant compositions from those known for other uses.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6468442, as applied above, in view of US 5714387.

The difference between 6468442 and the instant claims is the presence of a tracer component such as a fluorescent dye. US 5714387 teaches a method of determining the dosage rate of dust control agents sprayed on dusty surfaces by including a fluorescent dye in the material to be sprayed and then measuring fluorescence. While the intended use of the sprayed composition in 5714387 is different from that of the primary reference, one of ordinary skill in the art is clearly taught the technique useful for determining material deposition rates using a fluorescent dye. It would have been obvious to one of ordinary skill in the art to include a fluorescent dye to the composition of 6468442 because one of ordinary skill in the art is taught deposition rates may be determined therewith.

Claims 18, 19 and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art of record fails to teach or suggest adding lignin to the de-icer of 6468442. The prior art reference 6468442 fails to teach or suggest using the de-icer on particulate matter or the improved results obtained thereby.

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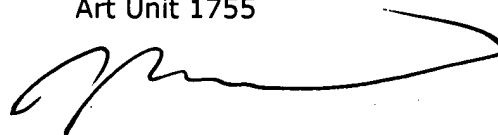
The instant claims have not been specifically analyzed for double patenting over the claims of 6468442 in that any response overcoming the art rejection would be expected to overcome the corresponding double patenting rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David M Brunsman whose telephone number is 571-272-1365. The examiner can normally be reached on M, W, F, Sa; 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Bell can be reached on 571-272-1362. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David M Brunsman
Primary Examiner
Art Unit 1755



DMB